



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 147

[EPA-HQ-OW-2013-0280; FRL-9962-68-OW]

State of North Dakota Underground Injection Control Program; Class VI Primacy

Approval

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) proposes to issue a rule approving an application from the state of North Dakota under the Safe Drinking Water Act (SDWA) to implement an underground injection control (UIC) program for Class VI injection wells located within the state, except those on Indian lands.

DATES: Comments must be received on or before **[Insert 60 days after publication in the Federal Register]**.

ADDRESSES: Submit your comments, identified by Docket ID No. **EPA-HQ-OW-2013-0280**, to the *Federal eRulemaking Portal*: <http://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or withdrawn. EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider

comments or comment contents located outside of the primary submission (i.e., on the web, cloud, or other file sharing system).

For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT: Lisa McWhirter, Drinking Water Protection Division, Office of Ground Water and Drinking Water (4606M), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW, Washington, DC 20460; telephone number: (202) 564-2317; fax number: (202) 564-3754; email address: mcwhirter.lisa@epa.gov or Douglas Minter, Underground Injection Control Unit, U.S. Environmental Protection Agency, Region 8, 1595 Wynkoop Street, MSC 8WP-SUI, Denver, Colorado 80202; telephone number: (303) 312-6079; fax number: (303) 312-7084; email address: minter.douglas@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Introduction

The state of North Dakota received primary enforcement responsibility (primacy) for Class I, III, IV and V injection wells under SDWA section 1422 on October 5, 1984, and Class II injection wells under SDWA section 1425 on September 24, 1983. The state of North Dakota has applied to the EPA under SDWA section 1422, 42 U.S.C. sections 300h-1, for primacy for Class VI injection wells, except those located on Indian lands. This action is based on a legal and technical review of the state of North Dakota's application as directed in the Code of Federal Regulations (CFR) at 40 CFR part 145. As a result of this review, EPA is proposing that the state of North Dakota's application meets all applicable requirements for approval under SDWA

section 1422, and the state is capable of administering a Class VI UIC program in a manner consistent with the terms and purposes of SDWA and all applicable regulations.

II. Legal Authorities

These regulations are being promulgated under authority of SDWA sections 1422 and 1450, 42 U.S.C. 300h-1 and 300j-9.

Requirements for State UIC Programs

SDWA Section 1421 requires the Administrator of the EPA to promulgate minimum requirements for effective state UIC programs to prevent underground injection activities that endanger underground sources of drinking water (USDWs). SDWA Section 1422 establishes requirements for states seeking EPA approval of state UIC programs.

For states that seek approval for UIC programs under SDWA section 1422, the EPA has promulgated a regulation setting forth the applicable procedures and substantive requirements, codified in 40 CFR part 145. It includes requirements for state permitting programs (by reference to certain provisions of 40 CFR parts 124 and 144), compliance evaluation programs, enforcement authority, and information sharing.

III. North Dakota's Application

A. Background

On June 21, 2013, the state of North Dakota submitted a program revision application to add Class VI injection wells to its SDWA section 1422 UIC program. The EPA reviewed the application and published a Federal Register document of North Dakota's Underground Injection Control Program Revision Application on August 9, 2013 (78 FR 48639), which sought public comments and provided an opportunity to request a public hearing. Public notice of North

Dakota's application was also published in the Bismarck Tribune on August 9, 2013.

B. Public Participation Activities Conducted by the State of North Dakota

The state of North Dakota held two public hearings with public comment periods on the state's intent to adopt its Class VI UIC regulations. The first public hearing was held on April 24, 2012, and the public comment period closed on June 8, 2012. The second public hearing was held on October 22, 2012, and the public comment period closed on November 1, 2012. Both public hearings were held in Bismarck, North Dakota, and no public comments were received during the two public comment periods.

C. Public Participation Activities Conducted by the EPA

On August 9, 2013, a document announcing North Dakota's Underground Injection Control Program Revision was published in the Federal Register (78 FR 48639) and in the Bismarck Tribune. This document provided that a public hearing would be held if requested. The agency did not receive any requests for a public hearing and received five written comments. Two comments were outside the scope of the state's application and three comments were focused on the Memorandum of Agreement between Region 8 and the North Dakota Industrial Commission. The EPA worked with the Commission to address these comments and revise the Memorandum of Agreement.

IV. EPA's Proposed Action

In this action, the EPA is proposing that the state of North Dakota's Class VI UIC program will assume primary enforcement authority (primacy) for regulating Class VI injection wells in the state, except for those located on Indian lands. Support of this action is part of the public record in EPA's Docket No. **EPA-HQ-OW-2013-0280**. When finalized, this action will

amend 40 CFR part 147 and incorporate by reference the EPA-approved state statutes and regulations. The EPA will continue to administer its UIC program for Class I, II, III, IV, V and VI injection wells on Indian lands.

The provisions of the state of North Dakota's Code that contain standards, requirements, and procedures applicable to owners or operators of Class VI UIC wells will be incorporated by reference into 40 CFR 147.1751. Provisions of the state of North Dakota's Code that contain standards, requirements, and procedures applicable to owners or operators of Class I, III, IV and V injection wells have already been incorporated by reference into 40 CFR 147.1751. Any provisions incorporated by reference, as well as all permit conditions or permit denials issued pursuant to such provisions, will be enforceable by the EPA pursuant to SDWA section 1423 and 40 CFR 147.1(e).

In order to better serve the public, the EPA is reformatting the codification of the EPA-approved North Dakota SDWA section 1422 Underground Injection Control Program Statutes and Regulations for Well Classes I, III, IV, V and VI. Instead of codifying the North Dakota Statutes and Regulations as separate paragraphs, the EPA is now codifying a binder that contains the EPA-approved North Dakota Statutes and Regulations for Well Classes I, III, IV, V and VI. This binder will be incorporated by reference into part 147. The EPA has made, and will continue to make, these documents available electronically through <http://www.regulations.gov> and in hard copy at the appropriate EPA office (see the ADDRESSES section of this preamble for more information).

The EPA will continue to oversee the state of North Dakota's administration of the SDWA Class VI program. Part of the EPA's oversight responsibility will require quarterly

reports of non-compliance and annual UIC performance reports pursuant to 40 CFR144.8. The Memorandum of Agreement between the EPA and the state of North Dakota, signed by the Regional Administrator on October 28, 2013, provides the EPA with the opportunity to review and comment on all permits.

V. Statutory and Executive Order Reviews

A. *Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review*

This action is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget (OMB) for review.

B. *Paperwork Reduction Act (PRA)*

This action does not impose any new information collection burden under the PRA. OMB has previously approved the information collection activities contained in the existing regulations and has assigned OMB control number 2040-0042. Reporting or record-keeping requirements will be based on the state of North Dakota UIC Regulations, and the state of North Dakota is not subject to the PRA.

C. *Regulatory Flexibility Act (RFA)*

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. In making this determination, the impact of concern is any significant adverse economic impact on small entities. An agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, has no net burden or otherwise has a positive economic effect on the small entities subject to the rule. This rule does not impose any requirements on small entities as

this rule approves a state program. We have therefore concluded that this action will have no net regulatory burden for all directly regulated small entities.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any state, local or tribal governments or the private sector. EPA’s approval of the state of North Dakota’s program will not constitute a federal mandate because there is no requirement that a state establish UIC regulatory programs and because the program is a state, rather than a federal program.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

F. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments

This action does not have tribal implications as specified in Executive Order 13175. This action contains no federal mandates for tribal governments and does not impose any enforceable duties on tribal governments. Thus, Executive Order 13175 does not apply to this action.

G. Executive Order 13045: Protection of Children from Environmental Health & Safety Risks

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may

disproportionately affect children, per the definition of “covered regulatory action” in section 2-202 of the Executive Order. This action is not subject to Executive Order 13045 because it approves a state program.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

This rulemaking does not involve technical standards.

J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations

The EPA has determined that this action is not subject to Executive Order 12898 (59 FR 7629, February 16, 1994) because it does not establish an environmental health or safety standard. This action will simply provide that the state of North Dakota has primacy under SDWA for the Class VI UIC program, pursuant to which the state of North Dakota will be implementing and enforcing a state regulatory program that is as stringent as the existing federal program.

List of Subjects in 40 CFR Part 147

Environmental protection, Incorporation by reference, Indian-lands, Intergovernmental relations, Reporting and record-keeping requirements, Water supply.

Dated: May 8, 2017.

E. Scott Pruitt,
Administrator.

For the reasons set out in the preamble, Title 40 chapter 1 of the Code of Federal Regulations is proposed to be amended as follows:

PART 147 – STATE, TRIBAL, AND EPA-ADMINISTERED UNDERGROUND INJECTION CONTROL PROGRAMS

1. The authority citation for part 147 is amended to read as follows:

Authority: 42 U.S.C. 300h *et seq.*; and 42 U.S.C. 6901 *et seq.*

2. Amend § 147.1751 by revising the section heading, introductory text and paragraph (a) and adding paragraphs (e) through (h) to read as follows:

§ 147.1751 State-administered program—Class I, III, IV, V and VI wells.

The UIC program for Class I, III, IV, and V wells in the state of North Dakota, except those located on Indian lands, is the program administered by the North Dakota Department of Health, approved by EPA pursuant to SDWA section 1422. Notice of this approval was published in

the Federal Register on September 21, 1984; the effective date of this program is October 5, 1984. The UIC Program for Class VI wells in the state of North Dakota, except those located on Indian lands, is the program administered by the North Dakota Industrial Commission, approved by the EPA pursuant to SDWA section 1422. Notice of this approval was published in the Federal Register on **[DATE OF PUBLICATION OF THE FINAL RULE IN THE FEDERAL REGISTER]**; the effective date of this program is **[DATE 90 DAYS AFTER DATE OF PUBLICATION OF THE FINAL RULE IN THE FEDERAL REGISTER]**. This program consists of the following elements, as submitted to the EPA in the state's program revision application.

- (a) Incorporation by reference.** The requirements set forth in the state statutes and regulations cited in the binder entitled "EPA-Approved North Dakota SDWA §1422 Underground Injection Control Program Statutes and Regulations for Well Classes I, III, IV, V and VI", dated December 2013, and Table 1 to paragraph (a) of this section are hereby incorporated by reference and made a part of the applicable UIC program under SDWA for the state of North Dakota. The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of the North Dakota regulations that are incorporated by reference in paragraph (a) of this section may be inspected at the U.S. Environmental Protection Agency, Region 8, Library 2nd Floor, 1595 Wynkoop Street, Denver, Colorado 80202; Water Docket, EPA Docket Center (EPA/DC) EPA West, Room 3334, 1301 Constitution Ave., NW, Washington, DC 20460; and the National Archives and Records Administration (NARA). If you wish to obtain materials from the EPA Regional Office, please call (303) 312-

1226; for materials from a docket in the EPA Headquarters Library, please call the Water Docket at (202) 566-2426. For information on the availability of this material at NARA, call (202) 741-6030, or go to

http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.

Table 1 to paragraph (a) EPA-Approved North Dakota SDWA §1422 Underground Injection Control Program Statutes and Regulations for Well Classes I, III, IV, V and VI			
State citation	Title/subject	State effective date	EPA approval date ¹
North Dakota Century Code Sections 38-12-01 – 38-12-03	Regulation, Development and Production of Subsurface Minerals	1980	September 21, 1984, 49 FR 37066
North Dakota Century Code Sections 61-28-02 and 61-28-06	Control, Prevention and Abatement of Pollution of Surface Waters	1989	March 6, 1991, 56 FR 9418
North Dakota Administrative Code Sections 33-25-01-01 – 33-25-01-18	Underground Injection Control Program	1983	September 21, 1984, 49 FR 37066
North Dakota Administrative Code Sections 43-02-02-01 – 43-02-02-50	Subsurface Mineral Exploration and Development	1986	March 6, 1991, 56 FR 9418
North Dakota Administrative Code Sections 43-02-02.1-01 – 43-02-02.2-19	Underground Injection Control Program	1984	September 21, 1984, 49 FR 37066
North Dakota Century Code Sections 38-22-01 – 38-22-23	Carbon Dioxide Underground Storage	2009	[Insert new FR date and #]
North Dakota Administrative Code Sections 38-08-16 – 38-08-17	Control of Oil and Gas Resources	2013	[Insert new FR date and #]
North Dakota Administrative Code Sections 43-05-01-01 – 43-05-01-20	Geologic Storage of Carbon Dioxide	2013	[Insert new FR date and #]

(e) The Memorandum of Agreement between EPA Region VIII and the North Dakota Industrial Commission, signed by the EPA Regional Administrator on October 28, 2013.

¹ In order to determine the EPA effective date for a specific provision listed in this table, consult the Federal Register notice cited in this column for the particular provision.

(f) The Memorandum of Understanding between the North Dakota Industrial Commission, Department of Mineral Resources, Oil and Gas Division and the North Dakota Department of Health, Water Quality Division, Related to the Underground Injection Control Program signed on June 19, 2013.

(g) *Statement of Legal Authority*: “Class VI Underground Injection Control Program, Attorney General’s Statement,” signed by the Attorney General of North Dakota on January 22, 2013.

(h) The Class VI Program Description and any other materials submitted as part of the program revision or as supplements thereto.

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